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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C.

FCC MAIL SECTION

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FCC 94-198

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In the Matter of)
)
Implementation of Section 309(j)) PP Docket No. 93-253
of the Communications Act -)
Competitive Bidding)

FURTHER NOTICE OF PROPOSED RULE MAKING

Adopted: August 1, 1994

Released: August 2, 1994

By the Commission:

Comment Date: September 12, 1994

Reply Comment Date: September 27, 1994

I. BACKGROUND

1. In the Memorandum Opinion and Order in GEN Docket No. 90-314, FCC 94-144 (released June 13, 1994), the Commission set forth rules for licensing Personal Communications Services in the 2 GHz band ("broadband PCS"), including specification of geographic service areas. We declined to allow general partitioning of those service areas, stating that such partitioning could be used to circumvent construction requirements, but we also recognized that the public interest may favor a different result "for particular groups of service providers, such as rural telephone companies, or to create PCS ownership opportunities for companies owned by minorities or women." Memorandum Opinion and Order at ¶ 83.

2. In the Fifth Report and Order in this proceeding, PP Docket No. 93-253, FCC 94-178 (released July 15, 1994) ("Fifth Report and Order"), the Commission determined that, to expedite the provision of broadband PCS in rural areas, which have historically suffered from delayed introduction of new services and fewer choices in service providers, rural telephone companies should be permitted to obtain PCS licenses by partitioning certain geographic areas from the licensed PCS service area (MTA or BTA). These companies will be permitted to acquire partitioned broadband PCS licenses in either of two ways: (1) they may form bidding consortia to participate in auctions, and then partition the licenses won among themselves, or (2) they may acquire partitioned broadband PCS licenses from other

licensees through private negotiation. We required that partitioned areas conform to established geopolitical boundaries (such as county lines) and that each area include that portion of the rural telephone company's wireline service area that lies within the PCS license area. In addition, where a rural telephone company acquires a partitioned license from another PCS licensee, the partitioned area must be reasonably related to rural telephone company's wireline service area. See Fifth Report and Order at ¶¶ 148-153.

3. Our rationale in allowing partitioning for rural telephone companies is that these companies are uniquely positioned to use their existing infrastructure to provide broadband PCS in rural areas. Many rural telephone companies argued that if they were required to bid on entire Basic Trading Area or Major Trading Area licenses to obtain licenses covering their wireline service areas, they would be effectively barred from entering the broadband PCS industry. They contend that under a partitioning plan, they would be able to serve areas in which they already provide service, while the remainder of the PCS service area could be served by other more efficient providers.

II. DISCUSSION

4. We wish to consider whether a similar post-auction broadband PCS partitioning plan should be adopted for the benefit of businesses owned by minorities and/or women. We note that some parties commenting on petitions for reconsideration that we received in GEN Docket No. 90-314 supported various forms of geographic partitioning.¹ Others, however, were opposed to partitioning.² The record has not been sufficiently developed on the issue of whether the public interest would be served by permitting businesses owned by minorities and/or women to hold partitioned licenses to enable the Commission to make a determination on this issue. We therefore seek further comment from interested parties.³ Commenters should address the following issues: (1) whether allowing businesses owned by minorities and/or women to hold partitioned PCS licenses would serve the public interest; (2) if so, what parameters the Commission should provide for these entities to obtain partitioned licenses (*i.e.*, through what mechanisms should partitioned licenses be granted and what, if any, limitations should apply); and (3) whether any such partitioning should be prohibited for a period of time after initial PCS licensing, and if so, for what period. Commenters should focus on the public interest impact that allowing such partitioning would

¹ See, e.g., comments of GTE Service Corp., Association of Independent Designated Entities, McCaw Cellular Communications, Inc. on Petitions for Reconsideration in GEN Docket No. 90-314.

² See, e.g., comments of MCI Telecommunications Corporation and comments of Nextel Communications, Inc. in GEN Docket No. 90-314.

³ Comments submitted on this issue in GEN Docket No. 90-314 will also be considered in this proceeding.

likely have. We are particularly interested in hearing from interested parties whether such partitioning could be expected to give rise to benefits corresponding to those we expect to derive from rural telephone company partitioning. We also seek comment on whether the potential benefits that may be derived by partitioning in this context outweigh any practical or administrative difficulties that might arise, and whether more rapid and better service will be provided to any areas as a result of the partitioning.

5. We also wish to explore whether the Commission should restrict the transfer or assignment of partitioned licenses (held by rural telephone companies or by businesses owned by minorities and/or women) for some period of time. We therefore seek comment on this issue, and ask commenters to address how long any such transfer restriction period should last.

III. PROCEDURAL MATTERS

6. An Initial Regulatory Flexibility Analysis is contained in the Appendix to this Notice of Proposed Rule Making. As required by Section 603 of the Regulatory Flexibility Act, the Commission has prepared an Initial Regulatory Flexibility Analysis (IRFA) of the expected impact on small entities of the proposals suggested in this document. The IRFA is set forth in the Appendix. Written public comments are requested on the IRFA. These comments must be filed in accordance with the same filing deadlines as comments on the rest of the Notice, but they must have a separate and distinct heading designating them as responses to the Initial Regulatory Flexibility Analysis. The Secretary shall send a copy of this Notice of Proposed Rule Making, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration in accordance with paragraph 603(a) of the Regulatory Flexibility Act. Pub. L. No. 96-354, 94 Stat. 1164, 5 U.S.C. § 601 et seq. (1981).

7. This is a non-restricted notice and comment rule making proceeding. Ex parte presentations are permitted, except during the Sunshine Agenda period, provided they are disclosed as provided in Commission rules. See generally 47 C.F.R. §§ 1.1202, 1.1203, and 1.1206(a).

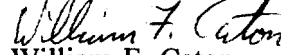
8. Pursuant to applicable procedures set forth in Sections 1.415 and 1.419 of the Commission's Rules, 47 C.F.R. §§ 1.415 and 1.419, interested parties may file comments on or before September 12, 1994, and reply comments on or before September 27, 1994. To file formally in this proceeding, you must file an original and four copies of all comments, reply comments, and supporting comments. If you want each Commissioner to receive a personal copy of your comments, you must file an original plus nine copies. You should send comments and reply comments to Office of the Secretary, Federal Communications Commission, Washington, DC 20554. Comments and reply comments will be available for public inspection during regular business hours in the Reference Center of the Federal Communications Commission, Room 239, 1919 M Street, N.W., Washington, DC 20554.

The complete text of the Notice may be purchased from the Commission's copy contractor, International Transcription Service, 1919 M Street, Room 236, Washington, D.C. 20554, telephone (202) 857-3800.

9. Issuance of this Notice of Proposed Rule Making is authorized under the Omnibus Budget Reconciliation Act of 1993, Pub. L. No. 103-66, Title VI, Section 6002, and Sections 4(i), 303(r), and 309(j) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 303(r), and 309(j).

10. For further information concerning this proceeding, contact Toni Simmons, Office of Plans and Policy, (202) 418-2030.

FEDERAL COMMUNICATIONS COMMISSION



William F. Caton

Acting Secretary

APPENDIX

As required by Section 603 of the Regulatory Flexibility Act, the Commission has prepared an Initial Regulatory Flexibility Analysis (IFRA) of the expected impact on small entities of the proposals contained in this Further Notice of Proposed Rule Making (FNPRM). We request written public comment on the IFRA, which follows. Comments must have a separate and distinct heading designating them as responses to the IFRA and must be filed by the comment deadlines provided above.

A. Reason for Action.

(i). This FNPRM is issued to obtain comment regarding the certain aspects of the implementation of Section 309(j) of the Communications Act, as amended by the Omnibus Budget Reconciliation Act of 1993 (Budget Act).

B. Objectives.

(ii). The Commission seeks to implement changes to the Communications Act that, inter alia, provide the Commission with the authority to award licenses to use the electromagnetic spectrum through competitive bidding.

C. Legal Basis.

(iii). The FNPRM is authorized under the Omnibus Budget Reconciliation Act of 1993, Pub. L. No. 103-66, Title VI, Section 6002, and Sections 4(i), 303(r), and 309(j) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 303(r), and 309(j).

D. Reporting, Recordkeeping and Other Compliance Requirements.

(iv). The proposals under consideration in this FNPRM include the possibility of new reporting and recordkeeping requirements for a number of small business entities.

E. Federal Rules Which Overlap, Duplicate or Conflict With These Rules.

(v). None.

F. Description, Potential Impact, and Number of Small Entities Involved.

(vi). The rule changes proposed in this FNPRM could affect small businesses if they apply for or are granted licenses in the Personal Communications Services in the 2 GHz band (broadband PCS). The FNPRM proposes that certain entities be permitted to obtain broadband PCS licenses for geographic areas that are partitioned from other broadband PCS licenses. After evaluating the comments in response to this FNPRM, the Commission will further examine the impact of any rule changes on small entities and set forth our findings in the Final Regulatory Flexibility Analysis.

**G. Any Significant Alternatives Minimizing the Impact on Small Entities
Consistent with the Stated Objectives.**

(vii). None.